IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 1324/2006

(Akbar Khan V/s State of Rajasthan & Anr.)

Date of Order : 26/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.A.Siddiqui, for the petitioner.
Mr. V.R.Mehta, P.P.
Mr. Chaitanya Gehlot for the respondent No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 05.09.2006 passed by the Sessions Judge, Churu (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 6.8.2005 passed by Judicial Magistrate, Churu (for short 'the trial court' hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the courts below.

It is contended by learned counsel for the petitioner that the petitioner failed to pay the monthly allowance of maintenance to the respondent No.2 as directed by the trial

court and for which a warrant of arrest was issued against the petitioner and the petitioner is prepared to undergo the sentence awarded in default of payment of monthly allowance of maintenance and therefore, when the petitioner is prepared to undergo the sentence, the maintenance amount cannot be realized.

Learned counsel for the respondent No.2 submits that in view of the decision of Hon'ble Supreme Court in Kuldeep Kaur Vs Surendra Singh AIR 1989 SC 232, even if a person undergoes the sentence awarded in default of payment of monthly allowance of maintenance, yet the monthly allowance of maintenance can be recovered as fine.

Learned counsel for the petitioner further submits that Section 421 Cr.P.C. provides procedure for levy of fine which reads as under :-

> 421. Warrant for levy of fine.- (1) when an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-
>
> (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender.
>
> (b) issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.
>
> Provided that, if the sentence directs that in default of payment of the fine, the offender shall be

imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing. It considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Sec.357.

(2)The State Government may make rules regulating the manner in which warrants under Cl. (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under Cl.(b) of sub-section (1), the Collector shall realize the amount in accordance with law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law.

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

According to learned counsel for the petitioner, a warrant for levy of amount by attachment and sale of any movable property belonging to the offender can be issued but no warrant for levy of amount by attachment of immovable property can be issued and it was lastly contended that even if a warrant of levy of fine amount can be issued against immovable property then such a warrant has to be issued to the Collector of the district authorizing him to realize the amount as arrears of land revenue from the movable or immovable property or both of the defaulter and the order of the Magistrate does not indicate that warrant has been issued to the District Collector to realize the

amount as arrears of land revenue. Learned counsel has relied on a decision of Punjab and Haryana High Court in Roshan Lal Vs. Kishan Lal and another 1991 Cri. L.J. 428.

Learned counsel appearing for the respondent No.2 invited my attention to the order dated 6.8.2005 passed by the trial court which in clear terms states that a warrant of attachment to attach the house immovable property of the petitioner be issued on filing the process fee to the District Collector, Nagaur for execution. Though a type copy of the order dated 6.8.2005 has been placed on record, wherein the words "District Collector, Nagaur have been omitted and by seeing the handwritten order of the trial court, it is clear that warrant of attachment has been sent to the District Collector, Nagaur. Thus, the contention raised by the counsel for the petitioner in this regard fails and therefore, the same is rejected.

So far as levy of amount of fine from the immovable property of the defaulter is concerned, in my view, Section 421 (1) (b) in clear terms provides for issue of warrant to the Collector of the district authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter and therefore, the contention with regard to the immovable property cannot be attached has to be rejected and is hereby rejected.

In Roshan Lal Vs. Kishan Lal and another (supra) it

was held that the Chief Judicial Magistrate was not competent for attachment of immovable property under Section 421 of the Code of Criminal Procedure, for that purpose he could issue a warrant to the Collector of the district as provided therein. The decision relied on by learned counsel for the petitioner in my view does not help the petitioner. On the contrary on facts it is clear that in the instant case, the warrant for levy of amount has been issued to the district Collector, Nagaur and therefore, it is not the case that the warrant has been issued directly by the Magistrate himself for realizing the amount of arrears of maintenance.

In this view of the matter, I do not find any merit in the criminal misc. petition and the same is therefore, dismissed.

(H.R.PANWAR),J.

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